

Message Text

CONFIDENTIAL

PAGE 01 STATE 132660
ORIGIN AF-10

INFO OCT-01 ISO-00 VO-05 DODE-00 SS-15 CA-01 L-03
/035 R

DRAFTED BY AF/E:PGSMITH:JJ
APPROVED BY AF/E:SHAMRICK
CA/VO:CBRATHWAITE (DRAFT)
DOD/ISA:DPARKER (SUBS)
DIA:KKIRKPATRICK (SUBS)

-----106641 242325Z /66

O 242308Z MAY 78 ZFF4
FM SECSTATE WASHDC
TO AMEMBASSY LILONGWE NIACT IMMEDIATE

C O N F I D E N T I A L STATE 132660

E.O. 11652: XGDS-1

TAGS: CVIS, PDIP, MI, US

SUBJECT: MALAWI DESERTER CASE

REF: A. LILONGWE 766; B. LILONGWE 765; C. ABERNATHY-
KIRKPATRICK TELECON, 5/24/78

1. DEPARTMENT HAS REVIEWED CASE, AND HAS CONCLUDED THAT
KEY IS MATAWERE'S MISTAKEN BELIEF THAT HAD WE WISHED TO
DO SO, THE US, LIKE SOME OTHER GOVERNMENTS, COULD HAVE
EXERCISED ADMINISTRATIVE DISCRETION TO DENY IMMIGRANT
VISA TO CHIWAYA. OF COURSE, AS OUTLINED IN PARA 2 OF
STATE 128253, NO SUCH DISCRETION EXISTS UNDER THE IMMI-
GRATION AND NATIONALITY ACT.

2. IDEALLY, THIS POINT SHOULD HAVE BEEN MADE BY DEFEMSE
ATTACHE IN HIS FIRST DISCUSSION OF THE CASE WITH MATAWERE.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 132660

3. OUR PROBLEM AT THIS POINT IS TO HEAD OFF GOM PUNITIVE
ACTION AGAINST HIM. TO THIS END, WE THINK IT IS IMPERA-
TIVE THAT CHARGE SEEK EARLIEST POSSIBLE APPOINTMENT
AT HIGHEST LEVEL (JOHN NGWIRI?) TO EXPLAIN USG POSITION
AND TRY TO GET IT TO PRESIDENT BANDA BEFORE HIS FRIDAY
MEETING WITH MATAWERE. CHARGE SHOULD EMPHASIZE THAT HE
IS ACTING UNDER DEPARTMENT INSTRUCTIONS TO CLARIFY THIS

MISUNDERSTANDING, AND MAKE FOLLOWING POINTS, LEAVING
AIDE MEMOIRE TO INSURE CLARITY:

-- UNLIKE MANY COUNTRIES' PRACTICE, U.S. IMMIGRANT
VISA ISSUANCE AND DENIAL IS SUBJECT OF DETAILED, SPECIFIC
STATUTORY PROVISIONS. IN THE ABSENCE OF GROUNDS FOR
DENIAL UNDER ONE OF PROVISIONS OF THE INA, AN IMMIGRANT
VISA CANNOT BE DENIED TO AN ALIEN WHO IS OTHERWISE
ELIGIBLE.

-- HENCE, WHEN DATT IMPLIED THAT USG WOULD BE RESPONSIVE
TO GENERAL MATAWERE'S CONCERN THAT US VISA NOT BE
ISSUED TO CHIWAYA, HE WAS UNAWARE THAT OUR AUTHORITY TO
DO SO WAS LIMITED BY LAW.

-- IN FACT, AND ON BASIS OF INFORMATION SUPPLIED IN PART
BY GENERAL MATAWERE HIMSELF, CONSULAR OFFICER IN LUSAKA
DETERMINED THAT THE ONLY POSSIBLE BASIS FOR REFUSAL OF
IMMIGRANT VISA TO CHIWAYA WAS HIS ADMISSION OF DESERTION
FROM MALAWI ARMY. UNDER THE INA (212(A)(9)), VISA
COULD ONLY BE DENIED ON THIS BASIS IF DESERTION WAS HELD
TO BE CRIME INVOLVING MORAL TURPITUDE AS DEFINED IN U.S.
LAW.

-- BEFORE ISSUING VISA, LUSAKA SOUGHT DEPARTMENT ADVICE
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 132660

ON THIS POINT, AND WAS TOLD THAT THE CONTROLLING DECISION
HAD BEEN REACHED BY THE BOARD OF IMMIGRATION APPEALS
IN 1952 AND NEVER SUBSEQUENTLY CHALLENGED. IN THAT
DECISION, THE BOARD HELD THAT EVEN DESERTION FROM THE
U.S. ARMY IN TIME OF WAR WAS NOT A CRIME INVOLVING MORAL
TURPITUDE AND THEREFORE NOT GROUNDS FOR REFUSAL OF A
U.S. VISA UNDER 212(A)(9). WHILE WE WOULD CERTAINLY
AGREE WITH THE GOM THAT CHIWAYA'S DESERTION WAS REPRE-
HENSIBLE, IT WAS NOT LEGALLY RPT LEGALLY A BASIS FOR
DENIAL OF AN IMMIGRANT VISA.

-- AFTER THIS CAREFUL AND DETAILED CONSIDERATION, BOTH
IN LUSAKA AND IN WASHINGTON, IT WAS CONCLUDED THAT
EMBASSY LUSAKA HAD NO ALTERNATIVE BUT TO ISSUE AN
IMMIGRANT VISA TO CHIWAYA, SINCE HE WAS OTHERWISE
ELIGIBLE.

-- USG REGRETS ANY EMBARRASSMENT TO GENERAL MATAWERE OR
GOM CAUSED BY THIS INCIDENT. USG WISHES TO ASSURE GOM
THAT EMBASSY LUSAKA'S ACTION DID NOT REFLECT ANY
DISREGARD FOR GOM'S WISHES OR US-GOM RELATIONS, BUT
RATHER LACK OF AUTHORITY UNDER U.S. LAW TO REFUSE VISA

FOR WHICH CHIWAYA WAS OTHERWISE ELIGIBLE.

-- USG REQUESTS THAT THIS EXPLANATION BE BROUGHT TO
PRESIDENT BANDA'S ATTENTION ASAP, IN ORDER TO PREVENT
DAMAGE TO US-GOM RELATIONS THAT COULD OTHERWISE RESULT.

CHRISTOPHER

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 STATE 132660
ORIGIN AF-10

INFO OCT-01 ISO-00 /011 R

66011
DRAFTED BY AF/E: PG SMITH
APPROVED BY AF/ECS HAMRICK
-----120606 260213Z /73
P 260120Z MAY 78
FM SECSTATE WASHDC
INFO AMEMBASSY LUSAKA PRIORITY 4678

C O N F I D E N T I A L STATE 132660

FOLLOWING REPEAT STATE 132660 ACTION LILONGWE MAY 24.

QUOTE: C O N F I D E N T I A L STATE 132660

E.O. 11652: XGDS-1

TAGS: CVIS, PDIP, MI, US

SUBJECT: MALAWI DESERTER CASE

REF: A. LILONGWE 766; B. LILONGWE 765; C. ABERNATHY-
KIRKPATRICK TELECON, 5/24/78

1. DEPARTMENT HAS REVIEWED CASE, AND HAS CONCLUDED THAT
KEY IS MATAWERE'S MISTAKEN BELIEF THAT HAD WE WISHED TO
DO SO, THE US, LIKE SOME OTHER GOVERNMENTS, COULD HAVE
EXERCISED ADMINISTRATIVE DISCRETION TO DENY IMMIGRANT
VISA TO CHIWAYA. OF COURSE, AS OUTLINED IN PARA 2 OF
STATE 128253, NO SUCH DISCRETION EXISTS UNDER THE IMMI-
GRATION AND NATIONALITY ACT.

2. IDEALLY, THIS POINT SHOULD HAVE BEEN MADE BY DEFEMSE
ATTACHE IN HIS FIRST DISCUSSION OF THE CASE WITH MATAWERE.
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 132660

3. OUR PROBLEM AT THIS POINT IS TO HEAD OFF GOM PUNITIVE
ACTION AGAINST HIM. TO THIS END, WE THINK IT IS IMPERA-
TIVE THAT CHARGE SEEK EARLIEST POSSIBLE APPOINTMENT
AT HIGHEST LEVEL (JOHN NGWIRI?) TO EXPLAIN USG POSITION
AND TRY TO GET IT TO PRESIDENT BANDA BEFORE HIS FRIDAY
MEETING WITH MATAWERE. CHARGE SHOULD EMPHASIZE THAT HE
IS ACTING UNDER DEPARTMENT INSTRUCTIONS TO CLARIFY THIS

MISUNDERSTANDING, AND MAKE FOLLOWING POINTS, LEAVING
AIDE MEMOIRE TO INSURE CLARITY:

-- UNLIKE MANY COUNTRIES' PRACTICE, U.S. IMMIGRANT
VISA ISSUANCE AND DENIAL IS SUBJECT OF DETAILED, SPECIFIC
STATUTORY PROVISIONS. IN THE ABSENCE OF GROUNDS FOR
DENIAL UNDER ONE OF PROVISIONS OF THE INA, AN IMMIGRANT
VISA CANNOT BE DENIED TO AN ALIEN WHO IS OTHERWISE
ELIGIBLE.

-- HENCE, WHEN DATT IMPLIED THAT USG WOULD BE RESPONSIVE
TO GENERAL MATAWERE'S CONCERN THAT US VISA NOT BE
ISSUED TO CHIWAYA, HE WAS UNAWARE THAT OUR AUTHORITY TO
DO SO WAS LIMITED BY LAW.

-- IN FACT, AND ON BASIS OF INFORMATION SUPPLIED IN PART
BY GENERAL MATAWERE HIMSELF, CONSULAR OFFICER IN LUSAKA
DETERMINED THAT THE ONLY POSSIBLE BASIS FOR REFUSAL OF
IMMIGRANT VISA TO CHIWAYA WAS HIS ADMISSION OF DESERTION
FROM MALAWI ARMY. UNDER THE INA (212(A)(9)), VISA
COULD ONLY BE DENIED ON THIS BASIS IF DESERTION WAS HELD
TO BE CRIME INVOLVING MORAL TURPITUDE AS DEFINED IN U.S.
LAW.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 132660

-- BEFORE ISSUING VISA, LUSAKA SOUGHT DEPARTMENT ADVICE
ON THIS POINT, AND WAS TOLD THAT THE CONTROLLING DECISION
HAD BEEN REACHED BY THE BOARD OF IMMIGRATION APPEALS
IN 1952 AND NEVER SUBSEQUENTLY CHALLENGED. IN THAT
DECISION, THE BOARD HELD THAT EVEN DESERTION FROM THE
U.S. ARMY IN TIME OF WAR WAS NOT A CRIME INVOLVING MORAL
TURPITUDE AND THEREFORE NOT GROUNDS FOR REFUSAL OF A

U.S. VISA UNDER 212(A)(9). WHILE WE WOULD CERTAINLY AGREE WITH THE GOM THAT CHIWAYA'S DESERTION WAS REPRESENTABLE, IT WAS NOT LEGALLY A BASIS FOR DENIAL OF AN IMMIGRANT VISA.

-- AFTER THIS CAREFUL AND DETAILED CONSIDERATION, BOTH IN LUSAKA AND IN WASHINGTON, IT WAS CONCLUDED THAT EMBASSY LUSAKA HAD NO ALTERNATIVE BUT TO ISSUE AN IMMIGRANT VISA TO CHIWAYA, SINCE HE WAS OTHERWISE ELIGIBLE.

-- USG REGRETS ANY EMBARRASSMENT TO GENERAL MATAWERE OR GOM CAUSED BY THIS INCIDENT. USG WISHES TO ASSURE GOM THAT EMBASSY LUSAKA'S ACTION DID NOT REFLECT ANY DISREGARD FOR GOM'S WISHES OR US-GOM RELATIONS, BUT RATHER LACK OF AUTHORITY UNDER U.S. LAW TO REFUSE VISA FOR WHICH CHIWAYA WAS OTHERWISE ELIGIBLE.

-- USG REQUESTS THAT THIS EXPLANATION BE BROUGHT TO PRESIDENT BANDA'S ATTENTION ASAP, IN ORDER TO PREVENT DAMAGE TO US-GOM RELATIONS THAT COULD OTHERWISE RESULT.

CHRISTOPHER.
UNQUOTE CHRISTOPHER

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: BRIEFING MATERIALS, DESERTION
Control Number: n/a
Copy: SINGLE
Draft Date: 24 may 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE132660
Document Source: CORE
Document Unique ID: 00
Drafter: PGSMITH:JJ
Enclosure: n/a
Executive Order: X1
Errors: N/A
Expiration:
Film Number: D780219-1075
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780522/aaaaasng.tel
Line Count: 247
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: d2094597-c288-dd11-92da-001cc4696bcc
Office: ORIGIN AF
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 LILONGWE 766, 78 LILONGWE 765
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 27 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2581772
Secure: OPEN
Status: NATIVE
Subject: MALAWI DESERTER CASE
TAGS: CVIS, PDIP, MI, US
To: LILONGWE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/d2094597-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014